

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1371 OF 1996

Shri Chandrakant Devu Shinde
Indian Inhabitant,
C/o. Prakash Ambe, Ambi Gulla,
Taluka Kagal, Dist. Kolhapur .. Petitioner

Vs.

1. Director,
Chhatrapati Shahu Central
Institute of Business Education
& Research, University Road,
Kolhapur.
2. The Secretary
Maharashtra State Social Welfare
Advisory Board, Bombay,
New Administrative Building
19th Floor, Opp. Mantralaya,
Bombay - 400 032.
3. P.W. Bhuyar, Judge,
Labour Court, Kolhapur.
4. A.P. Vibhute, Member,
Industrial Court, Kolhapur .. Respondents

Ms. Ranjana Todankar h/f Mr. S.S. Pakale for
Petitioner.
Mr. Abhay Nevagi i/by M/s. Paras Kuhad & Associates
for Respondent No.1.

CORAM: B.H. MARLAPALLE, J.

Date : July 21, 2005.

ORAL JUDGMENT:

1. The petition impugns the Judgment and Order of

the Industrial Court rendered on 19-1-1996 in Revision Application (ULP) No. 69 of 1995. By the said Judgment the Industrial Court was pleased to reverse the view taken by the Labour Court vide its Judgment and Order dated 30-12-1994 holding the petitioner to be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short "the I.D. Act").

2. The petitioner on completion of his graduation also acquired the degree in law as well as Master's degree in Social Work. The respondent no.1 appointed the petitioner as a "Social Case Worker" in the Family Counselling Centre on a consolidated salary of Rs. 700/- per month and on purely temporary basis upto 31st March, 1991 vide the order dated 20/11/1990. By another order dated 29/8/1992, his temporary tenure was brought to an end and, therefore, he approached the Labour Court at Kolhapur and filed Complaint (ULP) No.17 of 1993 under Item I(a), (b), (d) & (f) of the M.R.T.U. & P.U.L.P. Act, 1971 (for short "the Act"). The complaint was filed against two respondents,

namely, Chhatrapati Shahu Central Institute of Business Education & Research, Kolapur and Secretary, Maharashtra State Social Welfare Advisory Board, Bombay. The respondent- Institute filed reply and contested the complaint on maintainability as well as on merits. It pleaded that it did not come within the ambit of the term "Industry" as defined under Section 2(s) of the I.D. Act and the complainant was not a workman as defined under Section 2(s) of the said Act. Consequently the complaint was not maintainable.

3. On assessment of evidence, the Labour Court passed its order dated 30/12/1994 on these two preliminary points and held that the respondent-Institute fell within the ambit of the term "Industry" and the complainant was the workman within the meaning of the I.D. Act. It, therefore, directed the complaint to proceed on merits. However, the Industrial Court, while entertaining the challenge raised by the employer agreed with the findings of the Labour Court on the first point but did not agree with the findings on the second point regarding the status

of the complainant as a workman/employee. The Industrial Court referred to the decision in the case of Family Planning Association of India & Anr. vs. The Presiding Officer, Labour Court (3) U.P. & Anr. reported in **1994 I C.L.R. 465**, in which it has been held that the person working as a social worker in Family Planning Centre will be out of the ambit of the term "workman" as defined under Section 2(s) of the I.D. Act. As per the Industrial Court the said ratio was applicable to the case of the complainant as well and, therefore, the complainant was not a workman. Consequently, the complaint filed by him came to be dismissed.

4. Before the Labour Court the complainant did not step in the witness box to record his evidence. Nonetheless, the employer recorded oral evidence to discharge its burden on the preliminary issues raised by it, by examining two witnesses, namely, Shri Sanjay Mahadeo Bhopale and Ms. Savit Shankarrao Joshi. Both of them were working as social case workers at the Family Counsel Centre of respondent no.1. The Centre

was handling the cases of matrimonial disputes, counselling to the destitute women and their rehabilitation. It received 80% grant from the Government of India and remaining 20% from the respondent no.1-Trust. Mr. Sanjay in his depositions before the Labour Court stated that he was appointed as a social case worker since July 1993 and he possessed the qualification of B.A. plus M.S.W. The cases of matrimonial disputes and that of destitute women were referred to the social case workers, who, in turn, interact with such women, collect data, analyse it, interact with the persons concerned and counsel them so as to settle the disputes and/or rehabilitate the destitute women. He stated that he had handled about 80 to 90 such cases during his tenure from April 1993 to March, 1994. If the social case worker felt that there was no settlement possible, he would accordingly submit a report to the Institute and unless the qualification of Master's degree in Social Work was obtained, one would not be eligible to be appointed for such a post. It was also stated that in the course of counselling, the social case worker was required to visit the families,

relations or other connected individuals so as to collect more information/data in respect of the given case for its effective handling. Ms. Joshi in her depositions stated that the social case worker guided the aggrieved person for finding out a peaceful settlement amongst the spouses. The Family Centre also rehabilitated the destitute women. As per her the essential qualifications required were M.A. psychology or M.S.W. specialised with urban and rural development, personal management and child welfare.

5. In his complaint, the petitioner set out the nature of his duties along with his qualifications. He stated that he had sufficient experience in the field of social work after obtaining qualifications of law and social work. He was selected to the post of social care worker/counsellor by a due selection process. His nature of duties were described in the complaint in the following words:-

" If any dispute, difference of opinion are clashes, arises then either of the parties

required some social and legal assistance to solve their problems. The concerned party used to apply in writing its grievance. Such matters are referred to counsellor/social case worker. After receipt of such grievances the Institute used to allot such cases to the complainant. After receipt of such grievances, complainant used to approach both the parties and tries to solve their grievances by using various methods and techniques so as to bring the family in good and healthy atmosphere. Further more, the complainant also required to keep follow up with the parties in order to see that healthy and cordial relations are continued. The complainant was required to maintain all the record and to submit the information to the respondent no.2."

6. As per the complainant he was a workman as defined under the I.D. Act by taking into consideration the above mentioned duties he was performing while in the employment of respondent no.1. Section 2(s) of the I.D. Act indicates that a person would come within the purview of the said definition if he (i) is employed in any Industry or (ii) performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Apart from the decision relied upon by the Industrial Court in the case of Family Planning Association of India (Supra), a similar case has been recently considered

by the apex court in Management of M/s. Sonapat Co-operative Sugar Mills Ltd. vs. Ajit Singh reported in **AIR 2005 SC 1050**. It was a case of a person employed in the post of Legal Assistant with the qualifications of degree in law and a practicing licence. The nature of his duties was to prepare written statement and notices, recording enquiry proceedings, giving opinions to the Management, drafting, filing the pleadings and representing the employer in all types of cases i.e. civil, labour and arbitration references independently. He was also conducting department enquiries against the workmen employed in the industrial undertaking of the employer. He was held to be a workman within the meaning of Section 2(s) of the I.D. Act by the Labour Court but the same view was set aside by the learned Single Judge of the High Court. However, the Division Bench while entertaining the Letters Patent Appeal set aside the Judgment of the learned Single Judge and restored the award passed by the Labour Court for reinstatement. The Supreme Court referred to its earlier decisions in the case of Miss A. Sundarambal v. Government of Goa, Daman and Diu and ors.

reported in **AIR 1988 SC 1700**, S.K. Verma v. Mahesh Chandra and anr. reported in **AIR 1984 SC 1462**, H.R. Adyanthaya and ors. v. Sandoz (India) Ltd. and ors. reported in **AIR 1994 SC 2608**, Mukesh K. Tripathi v. Senior Divisional Manager, LIC and ors. reported in **AIR 2004 SC 4179** and observed in para 16 in the following words:-

" Thus, a person who performs one or the other jobs mentioned in the aforementioned provisions only would come within the purview of definition of workman. The job of a clerk ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. the question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regard the dominant nature thereof. With a view to give effect to the express to do "any manual, unskilled, skilled, technical, operational, clerical or supervisory work", the job of the concerned employee must fall within one or the other category thereof. It would, therefore, not be correct to contend that merely because the employee had not been performing any managerial or supervisory duties, ipso facto he would be a workman."

6A. It was further noted that the employee concerned, while working as a Legal Assistant, was not performing any stereotype job and his job involved creativity. He not only used to render legal opinions

on a subject but also used to draft pleadings on behalf of the appellant as also represent it before various courts/authorities and such a job could not make him a workman.

7. In the instant case, the learned counsel for the petitioner submitted that the petitioner was doing skilled and manual work. This submission is contrary to the nature of work described by the complainant himself in the complaint and reproduced hereinabove. It is obvious that the complainant was doing counselling which involves a detailed dialogue spread over in different sessions, collection of information about the reasons, circumstances and the person responsible for the marital disputes, social and educational background of the parties and the individual likes, dislikes, friends, relations, habits etc. Counsellor is basically a social worker, who takes the parties into confidence and makes them believe that he is their friend who is willing to act as a catalyst and help them in settling the matrimonial disputes. Such a person cannot be said to

be engaged in either manual, clerical, skilled or technical job. On the basis of his educational qualifications he is better equipped than other persons and with the specialised educational background and experience he has acquired the techniques of interacting with persons who are looking for help for rehabilitation or for restoring the normal marital life. Under these circumstances, the view taken by the Industrial Court cannot be termed as patently erroneous so as to call for interference under the supervisory powers of this court under Article 227 of the Constitution. The finding that, the petitioner was not a 'workman' within the meaning of Section 2(s) of the I.D. Act under the Respondent-Employer, is required to be upheld.

8. In the premises, this petition fails and the same is hereby dismissed. Rule discharged but without any order as to costs.

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(B.H. Marlapalle, J.)